

\*NO COPY OF THIS TRANSCRIPT MAY BE MADE PRIOR TO AUGUST 24, 2020

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

\* \* \* \* \*

CAROLINE CASEY and MAGGIE  
FLAHERTY

Plaintiffs,

v.

WILLIAM GARDNER, in his  
official capacity as New  
Hampshire Secretary of State,  
and GORDON MACDONALD, in his  
official capacity as New  
Hampshire Attorney General

Defendants.

\* \* \* \* \*

NEW HAMPSHIRE DEMOCRATIC PARTY,  
By Raymond Buckley, Chair

Plaintiff,

v.

WILLIAM GARDNER, in his  
official capacity as New  
Hampshire Secretary of State,  
and GORDON MACDONALD, in his  
official capacity as New  
Hampshire Attorney General

Defendants.

\* \* \* \* \*

TRANSCRIPT OF IN CHAMBERS VIDEOCONFERENCE  
BEFORE THE HONORABLE JOSEPH N. LAPLANTE

Consolidated Case  
No: 1:19-cv-149-JL

May 19, 2020  
4:04 a.m.

Appearances:

Via Videoconference:

For the Plaintiffs  
Caroline Casey and  
Maggie Flaherty:

Henry Klementowicz, Esq.  
Theresa J. Lee, Esq.  
American Civil Liberties  
Union Foundation

For the Plaintiff,  
NH Democratic Party:

William E. Christie, Esq.  
Suzanne Amy Spencer, Esq.  
Shaheen & Gordon

For the Defendants:

Anthony Galdieri, Esq.  
Samuel R.V. Garland, Esq.  
NH Attorney General's Office

Court Reporter:

Liza W. Dubois, RMR, CRR  
Official Court Reporter  
U.S. District Court  
55 Pleasant Street  
Concord, New Hampshire 03301  
(603) 225-1442

1 P R O C E E D I N G S

2 THE CLERK: The Court has before it for  
3 consideration today an in-chambers conference in civil  
4 case number 19-cv-149, Casey, et al, vs. New Hampshire  
5 Secretary of State, et al.

6 THE COURT: All right. Good afternoon,  
7 everyone.

8 MR. KLEMENTOWICZ: Good afternoon.

9 MS. LEE: Good afternoon.

10 THE COURT: Let's see. I see here on the  
11 screen attorneys from the AG's office, Attorneys Garland  
12 and Galdieri. And I think that's it, right?

13 MR. GALDIERI: Correct.

14 THE COURT: From the Democrats, I see  
15 Mr. Christie and Ms. Spencer.

16 And for the ACLU, I see Attorneys Lee and  
17 Klementowicz.

18 Do I have everybody? Yup. All right. Give  
19 me a wave if you can hear me, please.

20 All right. Great.

21 I believe we're on the record, right, Jadean?

22 THE CLERK: Yes, we are. Sorry.

23 THE COURT: All right. There's a couple other  
24 faces on the screen that might not be familiar to you.

25 We're, of course, conducting this hearing via

1 a videoconferencing platform because of the public  
2 health emergency and the coronavirus pandemic --  
3 coronavirus pandemic. Sorry about that, everybody.  
4 It's been a long day.

5 And I assume everybody's okay with that,  
6 nobody objects to proceeding by videoconference?

7 MR. GALDIERI: No.

8 MR. KLEMENTOWICZ: No.

9 THE COURT: All right. There are a couple  
10 other faces on the screen. You can probably see Katie  
11 Kerrick and Alec Pressly. Katie and Alec are law  
12 student interns -- actually, Katie just graduated from  
13 law school, so she's working towards her first law firm  
14 position, and Alec is a law student who's in my chambers  
15 for the summer.

16 Now, we'll get underway here.

17 Reviewing the motion for reconsideration, it  
18 became apparent to me, at least of not apparent,  
19 pretty -- pretty obvious to me that I had misunderstood  
20 the defendants' counsel's position vis-à-vis the sort of  
21 continuance to try to provide some more time to I guess  
22 have the benefit of the supreme court's ruling on the  
23 statutory interpretation question. And plaintiffs'  
24 (sic) counsel took great pains to show me that I had  
25 basically disregarded their argument and basically

1 ordered exactly what they were trying to avoid. And  
2 that's -- that's based on, I think, a misunderstanding  
3 which I regret. They also seemed to object to the  
4 ten-day window for posttrial briefing. So I regret  
5 both.

6 What I'd like to do primarily today then is  
7 without getting into too much of the same back-and-forth  
8 we had before is try and either -- either settle on a  
9 date here or at least give me enough information to  
10 issue an order on a schedule.

11 I've tried to think of all the options I can  
12 of how to schedule this trial. I'm going to try to list  
13 them off now.

14 So, yeah, I see Attorney Galdieri grabbing his  
15 pad here and I hope you'll all do the same so we can try  
16 to get to a place here where you can at least tell me  
17 your preferences and I can make a ruling.

18 It seems to me -- all right. I'm taking  
19 June 8th off the table because while I disagree  
20 vehemently with defense counsel's position that this  
21 Court is under some obligation to consider the Attorney  
22 General's Office's resources, scheduling problems,  
23 family obligations, or anything else in scheduling this  
24 trial and that I did so as an accommodation, I don't  
25 want to do it on a time, if I can help it, that is

1 clearly going to be difficult for them, which has always  
2 been my goal.

3 So I'm taking June 8th off the table, at least  
4 for this discussion right now. I'm not saying it's  
5 necessarily gone, but it's clearly not a date that  
6 defense counsel views as reasonable under the  
7 circumstances.

8 So we can do it June 1st and we can do it  
9 June 1st under sort of two scenarios. We can do it on  
10 the 1st regardless of whether we get a ruling from the  
11 supreme court interpreting the statute and just  
12 proceed -- proceed, I guess -- I think the plaintiffs  
13 would be wise to proceed under the assumptions -- under  
14 the interpretation of the statute that at the beginning  
15 of the litigation both sides seemed to share.

16 That's option one: June 1st regardless, just  
17 try the case.

18 Second is June 1st, but again subject to  
19 change if we don't have a ruling. That's the second  
20 option.

21 The third option is just take -- just take the  
22 matter off the trial calendar altogether and simply wait  
23 until the supreme court rules and then quickly -- and  
24 quickly schedule it up for a trial based on what we know  
25 about the statute to the extent necessary. It could

1 move the case out, or at least arguably could move the  
2 case out, or maybe not, but we would take that up at the  
3 time.

4           The other option is to just schedule the case  
5 further out, like a hard date that we -- that we just  
6 establish that is not problematic for counsel on either  
7 side or for the parties in terms of their rights,  
8 because one of the points that the plaintiffs' counsel  
9 has made repeatedly in this case is that they need to --  
10 they want to allow time for an appeal to the Circuit  
11 Court of Appeals should they get an adverse ruling from  
12 the Court.

13           Then one other, I guess, thought I had as I  
14 was trying to work through these options, Mr. Galdieri's  
15 motion made a point that, you know, at some level the  
16 plaintiffs -- I mean the defense feels that it -- it has  
17 been deprived of the opportunity to conduct a summary  
18 judgment -- to conduct summary judgment motion practice.

19           And I -- I guess I'm wondering, given that  
20 it -- you know, it wouldn't be optimal, but I'm  
21 wondering if given the fact that you've all conducted a  
22 lot of discovery and have a lot of people under oath and  
23 have experts with reports and the like, whether you  
24 might want to submit the case on a record and just have  
25 me decide it on a record. I mean, we could have oral

1 argument for, you know, an afternoon or a day or  
2 something, but really just give me what you've put  
3 together, make your arguments, and I'll rule on it.

4 I don't think that's anybody's preference here  
5 or it certainly isn't the plaintiffs' preference, but I  
6 want it out there because of Mr. Galdieri's argument to  
7 that effect.

8 I thought what you were telling me was the  
9 last time we were together was that, look, given that  
10 there isn't going to be time for motion practice, you'd  
11 like to be able to look at the evidence and do posttrial  
12 briefing. I thought, fine, and I'm still willing to do  
13 that, although, of course, it does add some time.

14 Anyway, so given that those are, I think, the  
15 options -- first of all, does anybody have -- before I  
16 ask you to sort of rank the preferences for me, does  
17 anybody have any other option they'd like to just  
18 propose to my list that I haven't thought of?

19 MR. CHRISTIE: Yes.

20 THE COURT: Go ahead, Mr. Christie.

21 MR. CHRISTIE: It's an option that the Court  
22 suggested last fall, that in considering the balance of  
23 the equities at this point in time, I -- and it's the  
24 State's -- not the State's schedule, but their lawyers'  
25 schedule that they're asking relief here, the State



1     could agree to stay part or all of the statute or the  
2     enforcement of the statute in order to give us all  
3     breathing time to resolve this issue before the November  
4     election.

5             It was a very reasonable proposal back in the  
6     fall that was rejected. I think we have a clear record  
7     here of prejudice if this trial date slides too long.

8             And I guess, you know, I'm always willing to  
9     accommodate someone else's schedule, but sometimes to  
10    get a schedule accommodation, someone has to be  
11    accommodating themselves. And it seems to me that would  
12    take the pressure of the supreme court, it would take  
13    the pressure off of this court, and the pressure off the  
14    First Circuit if the State would agree to that  
15    reasonable proposal.

16            THE COURT: All right. I mean, I -- I did  
17    think it was a reasonable proposal at the time, but we  
18    had a meeting about it, Mr. Christie, and the Attorney  
19    General himself sat in the conference room with all of  
20    us and told me that there were -- under no -- he --  
21    under no circumstances would he agree to that.

22            I'll let Mr. Galdieri speak to it if he'd like  
23    to.

24            MR. CHRISTIE: Then if that's the case, his  
25    lawyers should be ready for trial. I mean, if they're

1 going to take the position that they cannot accommodate  
2 the Court and the parties on that schedule and they're  
3 demanding a continuance here based upon briefing that's  
4 at the supreme court, I'm sure they could get a  
5 continuance of their briefing schedules at the supreme  
6 court because it's the supreme court who has failed to  
7 act here, if they pointed that out to them.

8           Then -- and if they don't want to do that,  
9 then if they want their continuance, then they should  
10 make an accommodation here is our view, as another  
11 option.

12           THE COURT: Yeah. Go ahead, Counsel.

13           MR. GALDIERI: So, your Honor, the plaintiffs  
14 have chosen to proceed on an expedited track. They have  
15 pushed an expedited trial. They had adhered to this  
16 expedited trial schedule for the entire life of this  
17 case. It wasn't until two weeks ago where --  
18 approximately -- that now we've got to continue it  
19 because we don't have a decision and that we think we  
20 need the decision to know what case to put on.

21           You know, I -- I sympathize with the position.  
22 The two weeks out -- we've made extensive accommodation  
23 to try this case within the two-week period of --  
24 beginning May 26th. We have the ability to bump it out  
25 a week and we made that clear. And if we can't do that

1 and we need some other time, planting it at a firm date  
2 in the month of July is -- is a -- an option for us.

3 But to, you know, force us to go back and,  
4 you know, undo everything we've done, ask for more  
5 extensions of time from litigants who've already given  
6 us 30-, 40-day extensions of time, this is just not --  
7 we're not just -- it's not really realistic to sort of  
8 in two-week increments drag this trial across the month  
9 of June and disrupt all the other sort of deadlines and  
10 litigation that goes on within our office and expect us  
11 to be prepared and able for trial.

12 So I -- I don't think that that's realistic,  
13 but, you know, if -- if we have to, if folks are very  
14 concerned about trying the case without the order and we  
15 have to pick a firm date in July, that perhaps gives us  
16 an opportunity if we see the New Hampshire Supreme  
17 Court's order to do something along the lines with what  
18 you talked about, Judge, which is, you know, can -- can  
19 this be submitted on the papers, this case.

20 I'm not sure it can until we see the supreme  
21 court's order in that regard. I think seeing the  
22 supreme court's order may significantly truncate the  
23 case, allow us to agree on many things and reduce the  
24 size and scope of the case, but we are up against sort  
25 of a -- a scheduling workload brick wall where we can't

1 work the middle of June as a time block.

2 We -- our position would be to adhere to the  
3 June 1st schedule and that could be -- that could be,  
4 you know, subject to change if we see the supreme  
5 court's order or -- or it can -- either option one or  
6 option two, or -- and what's probably -- what is  
7 probably more prudent is to move it into July and -- and  
8 maybe that works, depending on how long the Court may  
9 think it would take it to turn an order around.

10 It seems like moving it to July and giving us  
11 more space can only probably be better for the ultimate  
12 presentation of the trial in the case and if we get a  
13 supreme court order and then there's any sort of post  
14 supreme court order filings around that order, you know,  
15 that may take -- make take time. And if that order  
16 comes in the middle of the trial, I don't know how that  
17 operates, but we'd have to figure that out.

18 THE COURT: Well, it -- if it landed in the  
19 middle of the trial -- someone's got to mute their mic  
20 out. I don't want to hear my feedback.

21 MR. CHRISTIE: Can I just respond to  
22 something --

23 THE COURT: No, not yet.

24 Mr. Galdieri, I mean, I'm not sure how you  
25 ranked the -- I think if I understood you correctly, you

1 ranked the July trial or the further out trial hard date  
2 as the best option, but I was asking you how you reacted  
3 to Mr. Christie's proposal. And you didn't mention it,  
4 so I assume that that's not something you want to talk  
5 about.

6 MR. GALDIERI: Yeah, that's not an option,  
7 Mr. Christie's proposal.

8 THE COURT: Just for what it's worth, though,  
9 you know, the idea that it's somehow shocking that the  
10 plaintiffs want to wait for this ruling, that that's an  
11 all of a sudden position, Mr. Galdieri, is a little  
12 much.

13 I mean, everybody wants that ruling, as far as  
14 I know. I know this Court does. If this Court -- I  
15 know you urged on me from the beginning that this is a  
16 simple matter of statutory interpretation and that this  
17 Court -- but -- and that it could be resolved in this  
18 court. It could be resolved in this court. I mean, I  
19 know what I think the answers are. However, this is not  
20 the court that interprets New Hampshire law. Right?

21 Your role is to defend, as far as I know, the  
22 laws of the state and we're all waiting for the State to  
23 tell us what the law is. Right? That can be attributed  
24 to however much time -- well, the lack of clarity in  
25 this statutory scheme, which, you know, I think based on

1 the oral argument that I listened to in the supreme  
2 court, these issues are not frivolous or marginal  
3 issues. They're crucial interpretive issues that were  
4 not discussed by anybody the first time this was before  
5 the supreme court.

6 The statutory scheme is not particularly  
7 clear. It's got plenty of ambiguity requiring  
8 interpretation. That lack of ambiguity is attributable  
9 to the State. The time it's taking now to interpret it  
10 is attributable to the State. So it's not -- I don't  
11 find it in some way unconscionable or surprising here  
12 that some of the burdens here are going to fall on the  
13 State.

14 So I -- I'm a little bit put off by the idea  
15 that all of a sudden the plaintiff -- I know they've  
16 been pushing for an expedited trial because -- they have  
17 been. But it's not like anybody -- it's not like it's a  
18 surprise to anybody that the supreme court's  
19 interpretation of this scheme is an important part of  
20 this litigation. I mean, we certified the question for  
21 a reason. It wasn't -- it's not just some side,  
22 tangential issue that doesn't have much impact on the  
23 litigation. It's pretty crucial.

24 Did I -- did I interpret you, though,  
25 Mr. Galdieri, correctly that I guess your preference is

1 the July; is that -- or a date later, but July is what  
2 you're suggesting?

3 MR. GALDIERI: Yeah, I think if we have to do  
4 it in June that we would have to start June 1st.  
5 Otherwise, we'd have to move to July as a preference.

6 THE COURT: Okay. Can I -- can you explain to  
7 me one thing I'm not clear on.

8 Why is it that -- why is it that every other  
9 deadline you have, which I'm not -- I'm not accustomed  
10 to seeing in briefing, by the way. I'm accustomed to  
11 having conversations about those things. I'm not  
12 accustomed to being told I committed an abuse of  
13 discretion by not sufficiently accommodating your  
14 litigation schedule, your family obligations, and  
15 everything else you listed in that motion. However,  
16 we'll get to that in a while.

17 What I don't understand is why all of those  
18 are set in stone, but our schedule is the one that must  
19 be moved to accommodate all of that. Why is that?

20 MR. GALDIERI: Well, our schedule was set.  
21 Our schedule -- we moved times and dates and made  
22 arrangements around that set schedule. That schedule  
23 has now changed at the last minute in the -- and it's  
24 changed, you know, in the most part based on something  
25 we can't control.

1           And now we're in a position where we've got to  
2 go back to the very same individuals and tribunals to  
3 secure additional extensions, make additional  
4 arrangements to move out -- where are we moving these  
5 deadlines to? Two weeks -- two more weeks and then we  
6 still don't have the order, and then the trial bumps out  
7 two more weeks. And --

8           THE COURT: I agree with you there. I -- I  
9 think your point about the continual two-week  
10 dragging is a very bad idea, but I'm still not sure I  
11 understand -- I mean, we're waiting for the State to  
12 tell us the law. That's what we're waiting for.  
13 We're -- you say things you can't control. Well, maybe  
14 you can't control them, but you -- if anybody here has a  
15 measure of control over this, it's you. It's not --  
16 it's not your adversaries and it's not the federal  
17 court. We're waiting on the State of New Hampshire to  
18 act so we can proceed.

19           We may have to proceed without it, we may not  
20 have a choice, but certainly that's not optimal. And  
21 this -- this idea that somehow every other deadline that  
22 I guess I'm supposed to appreciate in your litigation  
23 schedule -- I've never heard of -- I've never heard of a  
24 situation where lawyers are -- for an institutional  
25 government office are -- are arguing that the Court is



1 supposed to be cognizant -- I know you told me those  
2 things in the hearing and I clearly got the one-week  
3 swing wrong, and I do apologize for that.

4 But if you think it's my obligation or the  
5 Court's obligation to be in command of all of that and  
6 cognizant of it and even necessarily sensitive to it, we  
7 have a very different idea of what the Court's  
8 obligations are in a situation like this,  
9 notwithstanding your citations to criminal cases  
10 involving the Sixth Amendment right to counsel, all of  
11 which were denials of continuances and all of which were  
12 upheld on appeal.

13 I still don't understand why it's this case --  
14 I view this case as a fairly important case and I'm not  
15 saying your other cases aren't important, but some of  
16 the things you cited to me were answering deadlines in  
17 *pro se* litigation from litigants who have been in this  
18 court for many years. I mean, it isn't like you  
19 couldn't get relief from those deadlines and that you  
20 wouldn't be accustomed to it if you were to request it.

21 First preference from the State is a hard date  
22 after June down the road; second preference is June 1st  
23 regardless. Right?

24 MR. GALDIERI: Yes.

25 THE COURT: Okay. All right. Let me --

1 Mr. Christie, you wanted to say something a minute ago.

2 THE COURT: I think you addressed it, your  
3 Honor, but I guess just for the record, because it was  
4 said last time as well, it was the State's position that  
5 the January trial date had to be moved because of the  
6 certified questions and that we could not try this case  
7 without the certified questions.

8 So -- and we agreed with that. But the idea  
9 that this is something that the plaintiffs have -- a  
10 newly adopted position by the plaintiffs in early or mid  
11 May is just not borne out by the record.

12 And I also wonder, you know, how many times --  
13 this is a unique circumstance, but how many times in the  
14 history of certified questions from a federal court to a  
15 state court have questions been certified and then  
16 everyone just went forward and tried the case without  
17 the questions being answered. I mean while they were  
18 still pending before a court. It just --

19 THE COURT: I don't know.

20 MR. CHRISTIE: It's just an extraordinary set  
21 of circumstances.

22 So -- and -- and, finally, just on the public  
23 interest here, for everyone, for the -- for the  
24 plaintiffs, for the State, for the citizens of  
25 New Hampshire who are going to vote in this election,

1 people need to know what the law is. This state could  
2 decide -- the four electoral votes in this state could  
3 decide who the President of the United States is in  
4 January. It could decide who controls the Senate in  
5 January. There's state elections. And, again, people's  
6 schedules -- I'm always loathe to jam up people's  
7 schedules, but those issues need to be resolved as  
8 quickly as possible.

9 And so I -- you know, it's our position that  
10 the June 8th date, with the understanding that -- and  
11 hopefully the supreme court will rule before then, is  
12 the date that this case should go forward.

13 THE COURT: June 8th, yeah. What's your  
14 preference, though? It's not going to happen June 8th.  
15 What's your preference between June 1st and just a hard  
16 date that's after the month of June? And I'll ask  
17 Mr. Klementowicz the same thing after.

18 MR. CHRISTIE: I'm sorry, your Honor. What's  
19 the option again? I lost focus.

20 THE COURT: Mr. Galdieri said his preference  
21 is -- his first preference is a hard date sometime after  
22 the month of June, just go with it regardless of whether  
23 we have an answer.

24 His second preference is June 1st. I -- I  
25 think it's possible -- you may disagree, but it wouldn't

1 shock me if we -- if we got an answer shortly before  
2 June 1st, you might come -- all might come to me  
3 together, as I thought you did last week, by the way,  
4 looking to reschedule. Somehow when you came to me  
5 together to reschedule and I picked the wrong date, it  
6 was manifest error of fact or law, but I thought you all  
7 wanted to reschedule. And I -- I thought you asked for  
8 a status conference and that's what we did.

9 By the way, I do recognize that my letter --  
10 not my letter -- my ruling did make it look like that  
11 was sort of decided by consent and I -- the State's well  
12 within its rights to say, look, that didn't happen. It  
13 wasn't intended to seem that way, but it's one of those  
14 things that an order just reflected something that I  
15 didn't intend.

16 But I think the State -- you know, I think the  
17 State's right to correct the record there.

18 But --

19 MR. CHRISTIE: So --

20 THE COURT: But -- wait.

21 MR. CHRISTIE: Okay.

22 THE COURT: He says -- he says the hard  
23 date -- the hard date is preference one; preference two  
24 is June 1. As between those two, what's your  
25 preference?

1 MR. CHRISTIE: I would say June 1, if we have  
2 a supreme court decision --

3 THE COURT: Yeah.

4 MR. CHRISTIE: -- or no later than July 1.

5 THE COURT: No later than July 1.

6 Mr. Galdieri, I don't have -- is July 1 too  
7 close to your June -- the stuff -- the things that are  
8 listed? I'm not suggesting it's going to be  
9 dispositive, but is it too close to your June  
10 obligations to be workable?

11 MR. GALDIERI: Wait. I have the wrong  
12 calendar. I'm in June still.

13 July 1, I will be out of town July 1.

14 THE COURT: Yup.

15 MR. GALDIERI: Following the week of  
16 July 4th -- well, I guess July 4th is on a Saturday, but  
17 any -- any full week in July would work for us.

18 THE COURT: Any full week in July. Okay.

19 MR. GALDIERI: To start.

20 THE COURT: Yup. Okay. Mr. Klementowicz,  
21 you've been patient.

22 MR. KLEMENTOWICZ: Sorry, Judge. I'm taking  
23 myself off mute.

24 I -- I don't think that there's -- you know,  
25 I -- I don't think that there's particularly good

1 answers to any of this. I think we're choosing from the  
2 worst options and I think that's probably why it's been  
3 so difficult to get everyone to agree on scheduling.

4 I would say June 1 with a supreme court order  
5 or July 1.

6 THE COURT: Same as Mr. Christie.

7 MR. KLEMENTOWICZ: Yes.

8 THE COURT: I -- you know, I don't think it's  
9 unreasonable, though, when we say July 1, you know, if  
10 we moved it to the first full week. It would be  
11 July 6th. Okay.

12 MR. KLEMENTOWICZ: I -- I'd wonder if in  
13 suggesting July if the defendants would be willing to  
14 abandon any *Purcell vs. Gonzalez* arguments in the event  
15 that a ruling came too close to an election.

16 That's -- one of our concerns, your Honor, is  
17 that there's a line of supreme court cases -- well, a  
18 supreme court case and then a line of cases from that  
19 mostly talking about preliminary injunctive relief, but  
20 talking about the risks associated with election  
21 administration-type relief too closely to an election.

22 It's not -- I don't think it's applicable in  
23 this case because this isn't election administration  
24 law, but, you know, one of the reasons we're hesitant  
25 about pushing the case out is we're sensitive to those

1 arguments being raised. And so I wonder if that's  
2 something that in requesting the continuance from  
3 June 8th the State is willing to say that they're not  
4 going to advance.

5 THE COURT: Tell me -- tell me the proposition  
6 of law again that you're worried about.

7 MR. KLEMENTOWICZ: The proposition of law is  
8 that by issuing an injunction too closely to an  
9 election, a court itself can create confusion, which --  
10 so this is -- this is -- if you recall, the Wisconsin  
11 primary that happened just a few weeks ago that went up  
12 to the U.S. Supreme Court --

13 THE COURT: Oh, yeah.

14 MR. KLEMENTOWICZ: -- that was the basis, was  
15 that injunction was issued too close to the election.

16 THE COURT: Understood. Yeah. All right.

17 All right. By the way, let's also talk about  
18 this idea -- I got the sense from your motion,  
19 Mr. Galdieri, that you thought the -- I got the sense  
20 that you thought the ten-day window -- I think you asked  
21 for two weeks and I said, well, ten days. I was just  
22 trying to -- honestly, I was trying to get the case  
23 decided earlier. I mean, that's a burden on the Court,  
24 the way I look at it, but is the two weeks versus ten  
25 days important to you for some reason?

1 MR. GALDIERI: Well, the ten days is more  
2 problematic if the trial sort of ends after the two-week  
3 rescheduled period because there are many things to  
4 write during that time and that creates a problem. But  
5 otherwise it would --- it wasn't a problem as originally  
6 scheduled. We were able to make it work.

7 THE COURT: It puts you in the thick of other  
8 things going on.

9 MR. GALDIERI: That's correct.

10 THE COURT: All right. Okay. All right.

11 Well, so defendants want July. Plaintiffs  
12 want June 1 if we get an order; if we don't get an  
13 order, July 1. Right? Yeah.

14 Okay. Give me a moment here.

15 Yeah. All right. Well, I think probably the  
16 likely outcome will be -- will likely be what I think --  
17 what I think is the best accommodation of both  
18 positions, which is that the July -- the June 1, which  
19 the defendants' counsel represents they can handle a  
20 trial on if we get the order; if not, move it to the  
21 first full week in July.

22 Okay. Let me ask you one other thing,  
23 Mr. Galdieri, because I'm very, you know -- I can't  
24 tell -- your motion in some ways reminds me of sometimes  
25 you get a motion in criminal law -- Mr. Christie's



1 familiar with this -- that looks like it's an attempt to  
2 just plant a seed for error later. You took the  
3 position that it was hard to see how the way this has --  
4 that discovery has proceeded without an answer as  
5 irreversibly creating prejudice.

6 Now, I'm not prepared to go forward in this  
7 litigation one more second if that is a position you're  
8 taking and attempting to preserve as of now. I couldn't  
9 tell if it was just sort of a rhetorical point to your  
10 larger point or if your position is what has happened up  
11 till now puts you -- because, frankly, any prejudice I  
12 see here is to the plaintiffs based on this issue  
13 because, as you pointed out in your argument, they're  
14 the ones who have been insisting on it. But if your  
15 position is that what's already happened has  
16 irreversibly prejudiced the case, I guess I need to know  
17 about that.

18 Is that your -- is that your argument?

19 MR. GALDIERI: Well, your Honor, I -- I think  
20 our position has been since the beginning -- and  
21 Attorney Christie indicated to this -- that that -- we  
22 are the ones saying back in December we can't have a  
23 January trial without -- without the order.

24 The order's going to affect how the evidence  
25 goes in. I'm not sure how the order doesn't potentially

1     affect how the evidence is developed or could have been  
2     developed during discovery. But -- but the plaintiffs  
3     wanted an expedited trial and now we're up against this  
4     window where discovery's closed.

5             I'm not entirely clear on, you know -- I think  
6     there's a possibility here that we get the order and  
7     parties want to reopen discovery for some limited period  
8     of time. I -- you know, I -- I don't -- I don't know  
9     what's possible. I don't know. But I -- that is a  
10    potential -- there's a potential issue in the case that  
11    without the answers to the certified questions, the  
12    evidence has been developed in a particular way.

13            I think everyone has gone along with that.  
14    It's one of the reasons why at least I personally was  
15    surprised two weeks prior to trial, after two weeks  
16    after discovery closes, that we're -- we were saying we  
17    can't try the case without the order. We've been  
18    through most of the case without the guidance of the  
19    order. So I know that --

20            THE COURT: Right, but you -- haven't you been  
21    conducting discovery as if the court was going to  
22    conduct the balancing test on the -- on the assumption  
23    that the ruling would be that the law was as originally  
24    interpreted by all of you, imposing -- imposing  
25    obligations to domesticated licenses and registrations?

1           MR. GALDIERI: We have not conducted discovery  
2 on the confusion issues. That is -- that is a part of  
3 the case we have not done that.

4           MR. CHRISTIE: I'm sorry. I have to interrupt  
5 there. I hate to be -- that is just inaccurate.

6           They have deposed my clients in this case for  
7 two depositions. Most of the questions at those  
8 depositions were about the confusion issue. Parties  
9 litigate cases, they take depositions, they take  
10 discovery all the time in litigation and they don't know  
11 what the answers are for the law governing the case  
12 until the last minute. Sometimes an appeals court  
13 decision changes the law. Sometimes it comes down to a  
14 motion in limine.

15           Every deposition in this case has covered all  
16 the variety of different possible outcomes that could  
17 come from the supreme court. Every lawyer in this case  
18 is confident they understand the certified questions,  
19 they understand the issues that came out at the start of  
20 the case, and that's how discovery, at least from our  
21 perspective, has been conducted.

22           MR. GALDIERI: Your Honor, just to respond to  
23 that briefly, I do not agree with that characterization.  
24 They have, you know, five to eight witnesses who are  
25 confusion-based witnesses who are not also effectively

1 plaintiffs in the case. We deposed Democratic party  
2 witnesses and it's true their primary concern was  
3 confusion.

4 I mean, I understand that, but that doesn't  
5 mean that we've conducted tactical discovery around the  
6 issue of confusion in the case as they've presented it  
7 and as against all the individuals they've disclosed.

8 So that is an avenue of discovery that we  
9 haven't gone down because we were banking on, you know,  
10 the New Hampshire Supreme Court decision is going to  
11 resolve the confusion. But we don't --

12 THE COURT: One way or the other.

13 MR. CHRISTIE: And that's their choice. Just  
14 because they haven't -- they've chosen not to take  
15 discovery of witnesses that were disclosed to them in  
16 the fall doesn't mean that this Court's orders have  
17 prejudiced them. If what they're saying now is we  
18 haven't done it despite the fact that we had six, seven,  
19 eight, nine months to do it, so now we feel prejudiced.  
20 That's just not the law.

21 THE COURT: Well, yeah. Is there a -- is  
22 there somewhere in the record I can look, Mr. Galdieri,  
23 that -- where you objected to some -- most of the  
24 Court's orders in this case have been sort of enforcing  
25 agreements between people, but is there some point where

1 you objected to something the Court did and pointed out  
2 that it was going to impact the way you conducted  
3 discovery in a way that would prejudice you?

4 MR. GALDIERI: We -- we had a conversation  
5 around certification with the Court --

6 THE COURT: Yeah.

7 MR. GALDIERI: -- early on where I think  
8 Attorney Christie said that the evidence -- this would  
9 affect the evidence at trial, the supreme court order,  
10 that plaintiffs' counsel weren't -- individual  
11 plaintiffs' counsel weren't willing to take that  
12 position. We agreed with that position that it would,  
13 it would affect the presentation of the case.

14 Can I think at a point in time where we've  
15 taken a different viewpoint? No, we've sort of had  
16 trial scheduled and believed that we were adhering to  
17 that trial schedule and moved forward through discovery,  
18 certified questions pending, awaiting resolution by the  
19 court. I don't think it was agreed that the case  
20 couldn't be put on or tried without the opinion.

21 So I -- I don't have a specific recollection  
22 of any sort of a motion, though, and I'm unclear on  
23 the -- what that -- I don't think we have a transcript  
24 or got a transcript of that hearing, so I'm unclear of  
25 what hearing that is, but I recall it and we discussed

1     that issue.

2             THE COURT:   Yeah.   Okay.   We discuss a lot of  
3     issues here.   We've been -- we've been -- I've been  
4     trying to approach this as collaboratively as I can.

5             Let me just ask it this way.   I still don't  
6     understand if you're telling me that there's  
7     irreversible prejudice in this case.   Because if there  
8     is, I want to know -- if there is prejudice in the case,  
9     is there relief that you are requesting separate and  
10    apart from this schedule on the June 1 trial or a later  
11    date?   Is there something else you'd like me to do?

12            MR. GALDIERI:   No, no, your Honor, not at this  
13    time.   I think there's a question of we get the supreme  
14    court order, depending on what it says, people may say,  
15    we need to supplement discovery, we need to supplement  
16    expert reports, we need to reopen certain depositions.

17            We have reserved that right in the structuring  
18    orders this whole time because that is a potential  
19    outcome, but nonetheless we've been moving toward a  
20    trial date that the plaintiffs wanted and that we are  
21    prepared to go ahead and meet, even without the court's  
22    order, knowing that that may be somewhat problematic.

23            THE COURT:   What do you say to Mr. Christie's  
24    point that nothing stopped you from conducting any  
25    discovery you wanted to conduct?   I mean, why are these

1 issues -- if there's any prejudice here that you seem to  
2 be hedging on, what -- why wasn't it within your power  
3 to eliminate it by conducting the discovery you wanted  
4 to?

5 MR. GALDIERI: Sure. We could have spent  
6 thousands of dollars to depose people we never had to  
7 depose and to investigate areas of the case that are  
8 moot and of no relevance to the case because of the  
9 supreme court order and then find out from the supreme  
10 court order that you should have done all these other  
11 things. It's certainly possible.

12 I mean, we made a tactical decision to proceed  
13 in that way precisely because we don't know what the  
14 answers are going to be, and I'm assuming everyone else  
15 has in the case. And now we're up two weeks before  
16 trial saying, well, we can't put the case in, we can't  
17 put the evidence we developed before you, your Honor,  
18 you know. We don't know how to do that.

19 I think the evidence can be put in and the  
20 Court can get a decision from the New Hampshire Supreme  
21 Court at a later point in time and then issue a decision  
22 or decide it needs to supplement the record or have  
23 additional briefing.

24 THE COURT: Well, we may get to that. You  
25 might be right about that, Mr. Galdieri. I -- I just

1 have one -- I want to say this, though, because  
2 irreversible is a pretty strong word. Your motion's got  
3 a lot of strong words in it, but let me just say this.

4 I find -- I find now that there's been no  
5 irreversible prejudice based on the interpretive  
6 uncertainty from the New Hampshire Supreme Court or lack  
7 thereof at this point. I don't have any problem, by the  
8 way, with the pace of my colleagues at the supreme  
9 court. I am sure they are endeavoring to complete that  
10 opinion and interpret the law as is their -- as is their  
11 duty.

12 But if there's been any prejudice in this  
13 period, to me, it falls on the plaintiffs. They bear  
14 the burden of proof. They didn't object to discovery  
15 proceeding. If there's any burden on the defendants  
16 here, it's relatively light. The defendants made their  
17 own choices about discovery.

18 It's being explained now in terms of the  
19 conservation of resources, but that's not something  
20 that, as far as I know, supports a finding -- a claim of  
21 irreversible prejudice attributable to the Court, the  
22 defendants' resource conservation and strategic and  
23 tactical decisions about discovery.

24 These questions before the New Hampshire  
25 Supreme Court have important legal implications, but



1     there's, I think, a relatively discrete set of potential  
2     outcomes here, very -- there's a small -- there's not  
3     a -- there's not a -- there's myriad outcomes. There  
4     are a few very predictable outcomes.

5             And I think defendants can reasonably conduct  
6     discovery in light of those possibilities -- could have,  
7     and I think probably did. I don't see how the  
8     interpretive uncertainty in this situation could have  
9     any potentially prejudicial effect on the evidence  
10    gathered in discovery.

11            I'm not sure what decisions the defendant  
12    made, other than I guess deciding not to pursue  
13    depositions of certain witnesses that were made in the  
14    response to the lack of the supreme court's opinion  
15    here.

16            If there's a live case still after the supreme  
17    court rules, the vast majority of the evidence relevant  
18    to trial would seem to be the same to the Court,  
19    regardless of any subtleties of the supreme court's  
20    decision and it's difficult for me to imagine, for  
21    example, you know how the defendants would have  
22    conducted an individual plaintiffs' deposition  
23    differently in light of the different statutory  
24    interpretations. Past voting data obviously is not  
25    altered by the supreme court's decision.

1           Forecasts or predictions might be affected --  
2   I guess affected potentially, but, again, I think  
3   parties ought to have been able to ask the right  
4   questions and conduct the right discovery to account for  
5   the limited range of potential outcomes here.

6           Now, if the supreme court produces a  
7   surprising ruling that dramatically alters the evidence  
8   here, the parties could, of course, seek a continuance,  
9   but that relief has not been requested by the defense.

10          I think the discovery process would likely  
11   have been very similar if this Court relied on the  
12   interpretive questions or had resolved them itself, but  
13   it wasn't this Court's role to do that. I firmly  
14   believe that, that the New Hampshire Supreme Court  
15   desires to be the interpreter of New Hampshire law and  
16   is the best interpreter of New Hampshire law, the best  
17   possible interpreter of New Hampshire law.

18          Both sides might have sought summary judgment  
19   rulings on the issues of statutory interpretation, but  
20   that would have come after discovery anyway in this  
21   case.

22          Now, I also don't think that the lack -- well,  
23   I'm trying to think this through, how this trial would  
24   look.

25          I also just don't think that any

1 discovery-related prejudice would result in necessarily  
2 delaying the trial until after the ruling. I think we  
3 potentially can try the case without the ruling, I think  
4 that's consistent with the defendants' position, but I  
5 don't think it's optimal.

6 The ruling -- it may have little effect on  
7 scope of the evidence to be gathered in discovery, but  
8 it may well affect the presentation of the evidence at  
9 the trial. I can see how it would have an impact there,  
10 at the trial, but not so much on the discovery.

11 Delaying the trial is inefficient, I recognize  
12 that, but it would also be inefficient to hold the trial  
13 at all if the supreme court ruling renders the whole  
14 issue moot, which I'm not saying I view as likely, but  
15 it's certainly possible. I think there are strong  
16 prudential reasons for the Court to avoid these  
17 speculative inquiries into the constitutionality of a  
18 state law when the interpretation of the law is  
19 forthcoming.

20 As I've pointed out, it's the defendants'  
21 obligation to defend New Hampshire law and we're waiting  
22 for New Hampshire to define and explain to us what its  
23 law is.

24 Now, if the supreme court declines to answer  
25 some of these certified question, which based on review

1 and hearing the oral argument could happen, I think it's  
2 possible this Court might have to answer those questions  
3 and doing so posttrial would be complicated and I am not  
4 inclined to do that if I can avoid it.

5 I guess that's more of a pragmatic concern  
6 than a strictly legal concern, but I just wanted to put  
7 that on the record because to the extent the defendants  
8 are arguing that there's been an irreversible prejudice  
9 to this proceeding, I reject that. I don't accept it.

10 Anything anybody else -- I have one more issue  
11 to address. Anything anybody else wants to address  
12 about the schedule or logistics?

13 I'm going to assume, Mr. Galdieri, that the  
14 ten days is still okay, especially just because it may  
15 be a later trial, possibly would be, but if you object  
16 to that, I'd prefer to hear it now than in a post ruling  
17 motion. Is the date --

18 MR. GALDIERI: Yes.

19 THE COURT: Okay.

20 MR. GALDIERI: It's okay.

21 THE COURT: Anybody else want to be heard on  
22 anything regarding the schedule, Mr. Christie first and  
23 then Mr. Klementowicz.

24 MR. CHRISTIE: No.

25 MR. KLEMENTOWICZ: No, Judge.

1 I just -- I a, assuming that the other  
2 deadlines in the pretrial statement and the pretrial  
3 conference will spring with the trial.

4 THE COURT: In other words, the same amount of  
5 days forward?

6 MR. KLEMENTOWICZ: Yes.

7 THE COURT: Mr. Galdieri, your position?

8 MR. GALDIERI: Yes, I -- that -- that works,  
9 unless for whatever reason the plaintiffs would want to  
10 talk about different dates. But that's --

11 THE COURT: All right. Yeah, I try to  
12 accommodate any agreements you make and I'll continue to  
13 do that.

14 MR. KLEMENTOWICZ: Thank you.

15 THE COURT: Just give me a moment. I'm  
16 communicating with the courtroom deputies and all that  
17 while we do this.

18 All right. I think that's going to mean,  
19 though, that some of your filings are due Friday. Okay.  
20 Everyone's nodding.

21 All right. Now, look, I need to do this. I  
22 wrote an order last night, decided not to issue it.  
23 Instead I issued that email this morning. I don't enjoy  
24 this, but I think I need to say it.

25 It's taking every bit of restraint I can

1 muster, Mr. Galdieri, to not be completely outraged by  
2 your motion for reconsideration. And I'm not talking  
3 about -- and, by the way, mea culpa, I did misinterpret  
4 your words last time and I got the date wrong. And  
5 I -- and the order made it seem as if it had been  
6 somehow agreed to or decided at the conference and I  
7 don't object to your correcting that a bit.

8 But the idea that -- the idea that selecting a  
9 date for the trial which was a week or so -- a week or  
10 so different than the date you requested when it's --  
11 when it was a conference where both parties agreed to  
12 change the date, the idea that that was an abuse of the  
13 Court's discretion and a manifest error of law in  
14 support of which you cited criminal cases involving  
15 the -- not really involving scheduling at all, but  
16 involving scheduling only as it related to the Sixth  
17 Amendment right to a jury trial -- all of which, by the  
18 way, appealed the denial of a continuance and all of  
19 which were upheld -- was distressing, to say the least.

20 As an alumnus of that office, I was  
21 nonplussed. I said to myself -- the thing is I know,  
22 Mr. Galdieri, you are the person who approves pleadings  
23 there. You're the boss. But I know for a fact that I  
24 would not have been permitted to file -- make a filing  
25 like that when I worked in that office and your

1 authority did not remotely support the legal position  
2 you were taking.

3 And even to take the position that the  
4 Court's -- that the Court was in some way obligated to  
5 account for all those points you made, I'm not aware of  
6 any law to that effect, that you are entitled to have  
7 the trial scheduled in a way that accommodates the  
8 schedules of any of the lawyers involved. Certainly I  
9 try to do that and I did try to do that. I've been  
10 trying to do that since day one here, being flexible and  
11 accommodating.

12 But to read your motion, the plaintiffs'  
13 counsel were on a sort of detour and frolic and mad dash  
14 in discovery, had a fractured position, the Court abused  
15 its discretion and that -- and counsel for the  
16 defendants have only been accommodating and cited law  
17 which clearly did not support the proposition you were  
18 advancing was very distressing. I discourage you from  
19 taking that approach again.

20 And it is -- it is -- especially when I read  
21 gems dropped into the -- dropped into the motion, that  
22 were news to me, that somehow the -- the way the case  
23 had proceeded had created irreversible prejudice to the  
24 proceeding, that struck -- that smacks of the type of --  
25 I don't even want to describe it and that's why I didn't

1 write an order. But it's very distressing to the Court.

2 We've been trying to proceed here in a  
3 collaborative, collegial way and for what the -- for  
4 what it's worth, that includes you. Your practice and  
5 conduct has been exemplary, but yesterday was different  
6 and very distressing.

7 I'm trying not to be personally outraged by  
8 it. I'm trying to be -- keep my -- restrain myself to  
9 only be institutionally upset about this, but that was  
10 not a supportable position and the authority cited for  
11 it completely inapposite; inapposite in a way that's  
12 obvious.

13 If you have authority for the proposition that  
14 this Court was obligated, obligated in such a way that  
15 to disregard that obligation was a manifest error of  
16 fact or law and an abuse of the Court's discretion, I  
17 expect you to provide that authority to the Court  
18 because I'm not aware of it.

19 I shouldn't give you a lecture like that  
20 without letting you say something if you want to. I'm  
21 not suggesting you have to say anything about it, but it  
22 wouldn't be right for me to just say that to you and  
23 adjourn the hearing. So if there's anything you want to  
24 say about it, this is your opportunity.

25 MR. GALDIERI: Well, I'll just say, your



1 Honor, I -- you know, I apologize. I didn't -- we  
2 didn't mean for it to be done that way. We tried to do  
3 this on an expedited basis to -- to show the Court the  
4 issues that we have. And -- and, you know, you should  
5 know I -- I'm not the only person who, you know signed  
6 off on that. That goes -- that goes above me. And we  
7 have clients who, you know, have positions in this case  
8 to defend.

9 So we certainly -- but I -- I hear all of your  
10 points and -- and I understand them and I do apologize.

11 THE COURT: Yeah. The -- well, I wouldn't  
12 expect you to apologize unless you agree with me that  
13 what you had done was inappropriate. I don't want to  
14 flog that, but two points.

15 If what you're telling me is that the  
16 positions you took were attributable to your clients,  
17 that's even more distressing than the motion itself.  
18 And telling me that people higher up the chain of  
19 command there were comfortable with that pleading is --  
20 is very distressing.

21 Regardless, we've all got to do our jobs.  
22 I'll continue to do mine. And I do want to make clear,  
23 by the way, that I do understand you were in a difficult  
24 position looking at an order that not only -- and I  
25 apologize again -- misconstrued the best date, but also

1 made it seem like it had been decided at the -- at the  
2 conference, and I recognize that it was not.

3 So I have something to be accountable for,  
4 too, and I recognize that.

5 All right, everybody. I'll get an order out  
6 here shortly, but what I'm thinking -- I'm going to  
7 discuss it with my law clerks who are working on the  
8 case with me, but I'm thinking I'm going to probably go  
9 with the June 1 date, you'll have an order by today if I  
10 do that, but with the -- the possibility of the July  
11 date should we not have an order from the court, the  
12 supreme court, before trial.

13 All right? Anything else anybody wants to say  
14 before we adjourn?

15 We'll start with Mr. Klementowicz.

16 MR. KLEMENTOWICZ: Thank you, Judge.

17 I don't -- I don't want to overly complicate  
18 things and I hope that this isn't, but I'm wondering if  
19 it makes sense to pick a date by which we've decided if  
20 we're going on the 1st -- for example, our -- I -- I  
21 will have to check this date, but I think it's the case  
22 that a week from Thursday is when the stipulated facts  
23 and assented-to statement of the case would --

24 THE COURT: All right.

25 MR. KLEMENTOWICZ: -- be due and I'm wondering

1 if that would be a good date to pick or not.

2 THE COURT: Yeah. So that would be the 28th.  
3 All right? That would be the 28th. So, in other words,  
4 if we don't have an order by the 28th, that's your  
5 proposal?

6 MR. KLEMENTOWICZ: I haven't talked about that  
7 with my team, but I'm not getting any glares over Zoom  
8 right now. But I think that makes sense.

9 THE COURT: Attorney Lee does not look happy  
10 with you right now. She looks a little -- I know. No,  
11 I'm -- I don't mean --

12 MS. LEE: I'm sorry, your Honor.

13 THE COURT: The 28th.

14 Before I get to Mr. Christie, how do you feel  
15 about that, Mr. Galdieri, as sort of a drop-dead date?

16 MR. GALDIERI: That works.

17 THE COURT: Mr. Christie?

18 MR. CHRISTIE: That -- I agree.

19 THE COURT: It's -- if you have a better idea,  
20 I'm listening.

21 MR. CHRISTIE: I don't. The only other idea I  
22 had -- I agree to that timing, Judge. I -- the other  
23 suggestion I was going to make was that -- and I know  
24 you're loathe to do that -- do this, but perhaps -- I  
25 don't know if it would be a letter, something from you

1 to the supreme court --

2 THE COURT: Yeah.

3 MR. CHRISTIE: -- just saying -- you know,  
4 reminding or prompting them, reminding them, that we  
5 need a ruling. I know Mr. Galdieri and Mr. Klementowicz  
6 have called. I know the Attorney General and  
7 Mr. Klementowicz have called, and -- but we're all  
8 grappling with these issues. And I know you're  
9 reluctant do it, but it may be helpful and so I just  
10 make that suggestion.

11 THE COURT: Yeah. Well, in -- Mr. Galdieri,  
12 if the Attorney General has been in touch and you've  
13 been in touch, do you get any kind of guidance?

14 MR. GALDIERI: What do you mean by that, like  
15 from the court?

16 THE COURT: Yeah.

17 MR. GALDIERI: No.

18 THE COURT: Okay.

19 MR. GALDIERI: No, we -- no, we haven't. No.  
20 But maybe -- you know, maybe some order coming out of  
21 this hearing about -- about the structure and saying  
22 that we're doing this to try to get the supreme court  
23 order.

24 I know plaintiffs' counsel was thinking about  
25 a submission for a joint motion to see if we can get a

1 quicker ruling and we might join that. And if we had  
2 some sort of order, we might be able to attach it to it  
3 and -- you know, not that that's going to -- you know,  
4 we do our best to highlight the issues, but it may be  
5 useful.

6 THE COURT: All right. Yeah, I'll make a  
7 reference to it in the order, but -- but believe me,  
8 Mr. Christie, I totally understand your request.

9 Let me just be honest with you. I mean, what  
10 concerns the Court, the -- the last thing this Court  
11 would want to do would be to even make a statement or a  
12 question or a reference that would suggest for a moment  
13 that the supreme court is not proceeding expeditiously  
14 enough. I -- you know, it -- it's not my opinion,  
15 honestly, number one; and an appellate court is  
16 different than a trial court. I don't have to persuade  
17 anybody of my opinion.

18 MR. KLEMENTOWICZ: I understand.

19 THE COURT: And it's -- so I would not want to  
20 suggest that to them. Nonetheless, I'll make a  
21 reference in the order.

22 The order may come out in the morning rather  
23 than tonight, by the way. I noticed the time. It's not  
24 a matter of doing it. It's a matter of getting it out.  
25 So it may come out in the morning. But it'll contain a

1 reference that might -- hopefully will be of assistance  
2 if you decide to seek relief from the court in terms of  
3 the timing of its ruling. All right?

4 Mr. Galdieri, I'll give you the last word.

5 MR. GALDIERI: I have nothing further, your  
6 Honor. Thank you.

7 THE COURT: Thanks, everybody.

8 Hold on a second. Let me just check with the  
9 deputy clerk.

10 Jadean, are you on the call?

11 THE CLERK: I am.

12 THE COURT: Anything you wanted me to cover?

13 THE CLERK: Nope. I'm good.

14 THE COURT: Alex -- Alex, anything you wanted  
15 me to cover that I didn't get to?

16 THE LAW CLERK: Nope.

17 THE COURT: All right, everybody. Thank you.  
18 We are adjourned.

19 MR. GALDIERI: Thank you.

20 MR. KLEMENTOWICZ: Thank you.

21 MR. CHRISTIE: Thank you, your Honor.

22 (Proceedings concluded at 5:07 p.m.)  
23  
24  
25

C E R T I F I C A T E

I, Liza W. Dubois, do hereby certify that  
the foregoing transcript is a true and accurate  
transcription of the within proceedings, to the best of  
my knowledge, skill, ability and belief.

Submitted: 5/26/2020

/s/ Liza W. Dubois  
LIZA W. DUBOIS, RMR, CRR